

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BANK UNITED,

Plaintiff,

v.

DAMIAN PETERS,

Defendant.

No. C 11-1756 PJH

**ORDER GRANTING MOTION
TO REMAND**

Before the court is the motion of plaintiff BankUnited for an order remanding the above-entitled action to the Superior Court of California, County of Sonoma. Defendant filed an opposition to the motion on May 17, 2011. Having reviewed the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion.

A defendant may remove a civil action filed in state court if the action could have originally been filed in federal court. 28 U.S.C. § 1441. A plaintiff may seek to have a case remanded to the state court from which it was removed if the district court lacks jurisdiction or if there is a defect in the removal procedure. 28 U.S.C. § 1447(c). The removal statutes are construed restrictively, so as to limit removal jurisdiction. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); see also Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (doubts as to removability are resolved in favor of remanding case to state court).

1 Subject matter jurisdiction is fundamental and cannot be waived. Billingsly v. C.I.R.,
2 868 F.2d 1081, 1085 (9th Cir. 1989). Federal courts can adjudicate only those cases which
3 the Constitution and Congress authorize them to adjudicate – those involving diversity of
4 citizenship or a federal question, or those to which the United States is a party.
5 See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994). The burden
6 of establishing federal jurisdiction for purposes of removal is on the party seeking removal.
7 Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004). The district court must
8 remand the case if it appears before final judgment that the court lacks subject matter
9 jurisdiction. 28 U.S.C. § 1447(c).

10 The complaint at issue, which was filed in Sonoma County Superior Court on March
11 11, 2011, alleges a single cause of action under state law, for unlawful detainer to recover
12 possession of property following a non-judicial foreclosure sale of the property on February
13 18, 2011. Following the sale, defendant Damian Peters remained in possession of the
14 premises without BankUnited's permission. On February 28, 2011, BankUnited served
15 defendant with a three-day notice to vacate the property.

16 The complaint alleges that as of the date the complaint was filed, defendant
17 remained in possession of the property. The complaint was filed as a "Limited Civil Case,"
18 and specifies on the caption page, "Demand under \$10,000." The complaint seeks
19 restitution of the property; an amount equal to the reasonable rental value of the property,
20 "approximately \$50.00" for each day from the date of expiration of the three-day notice that
21 defendant remains in possession of the property, until the date of judgment; plus costs of
22 suit.

23 On April 8, 2011, defendant filed a notice of removal, asserting diversity jurisdiction.
24 Defendant alleges that the parties are citizens of different states, and that the amount in
25 controversy – which he asserts is the value of the property – exceeds \$75,000. In the
26 present motion, BankUnited argues that defendant has not met his burden of establishing
27 that this court has subject matter jurisdiction.

28 Under 28 U.S.C. § 1447(c), the district court is required to remand state law claims

1 where the court lacks removal jurisdiction – that is, where there is no federal question or
2 diversity jurisdiction. Albingia Versicherungs A.G. v. Schenker Int'l, Inc., 344 F.3d 931, 936
3 (9th Cir. 2003). Federal courts have no power to consider claims for which they lack
4 subject-matter jurisdiction. See Chen-Cheng Wang ex rel. United States v. FMC Corp.,
5 975 F.2d 1412, 1415 (9th Cir. 1992).

6 In ruling on a motion to remand for lack of subject matter jurisdiction, the court looks
7 only to the face of the complaint. See Toumajian v. Frailey, 135 F.3d 648, 653 n.2 (9th Cir.
8 1998); see also Harris v. Bankers Life and Cas. Co., 425 F.3d 689, 692-93 (9th Cir. 2005).
9 Here, the amount in controversy is not the assessed value or the sales value of the
10 property. The complaint specifically states that the damages do not exceed \$10,000. If
11 BankUnited prevails against defendant in the unlawful detainer action, defendant's liability
12 will be measured by the fair rental value of the property for the time he unlawfully occupied
13 it. That amount will not exceed \$75,000. Thus, defendant has not met his burden of
14 establishing diversity jurisdiction. Further, the court finds no federal question pled in the
15 unlawful detainer action.

16 Accordingly, as the court lacks subject matter jurisdiction, it is ORDERED that this
17 case be remanded to the Sonoma County Superior Court. Because the court lacks subject
18 matter jurisdiction, it cannot consider any of defendant's arguments that do not bear on the
19 question of jurisdiction.

20 As the court finds that no hearing is necessary, the June 22, 2011 hearing date is
21 VACATED.

22
23 **IT IS SO ORDERED.**

24 Dated: May 23, 2011



25 _____
26 PHYLLIS J. HAMILTON
27 United States District Judge
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